isarc FAITH COMMUNITIES IN ACTION AGAINST POVERTY

Fair Workplaces, Better Jobs Act, 2017

Submission to the Standing Committee on Finance and Economic Affairs Ontario Legislature

by

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INTRODUCTION

The Interfaith Social Assistance Reform Coalition (ISARC) welcomes this opportunity to have a voice in the reform of Ontario's Employment Standards Act and the Labour Relations Act through Bill 148 the Fair Workplaces, Better Jobs Act, 2017.

Our coalition represents Ontario's major faith communities, including the Anglican Diocese of Toronto, the Anglican Diocese of Niagara, the Anglican Provincial Synod of Ontario, the Assembly of Catholic Bishops of Ontario, the Canadian Unitarian Council, Catholic Charities of the Archdiocese of Toronto, Dicle Islamic Society, the Canadian Council of Imams, the Council of Canadian Hindus, the Eastern Synod of the Evangelical Lutheran Church in Canada, the Western Ontario District of the Pentecostal Assemblies of Canada, the Islamic Humanitarian Service, Mennonite Central Committee Ontario, North American Muslim Foundation, the Presbyterian Church in Canada, the Redemptorists in Canada, the Society of St. Vincent de Paul, the Toronto Board of Rabbis, and the United Church of Canada.

We are particularly interested in this issue for three key reasons. First, because as people of faith, we believe that every human being has value and dignity, and thus our public policies and employment/labour relations standards must reflect this belief in the value of every human being. Secondly, for approximately 30 years we have advocated for measures to reduce poverty in Ontario, and we are deeply concerned about current employment practices that are deepening poverty, uncertainty and stress for tens of thousands of Ontario workers and their families. Thirdly, the government has committed itself to poverty reduction, and action to improve the lot of precarious workers must form an important element of this poverty reduction strategy.

The saying that it is better to teach a person to fish instead of just giving a person a fish also inspires our call for stronger measures to protect vulnerable workers. Maimonides, the medieval Jewish philosopher, had a hierarchy of ways of giving charity and at the top is the directive to help make the recipient self-sufficient so that aid would no longer be necessary. We know that a significant segment of the poor are working poor. These are people who already have jobs but are still incapable of supporting themselves and their families. Our goal in this public hearings

process is to identify measures that the government can take to strengthen employment standards and to provide meaningful access to collective bargaining so that workers will have the tools to secure adequate compensation for the work they perform and thus no longer require social assistance or food bank services.

Similar mandates can be found in the beliefs of ISARC'S other faith communities. For Muslims, the Qur'an affirms that the socio-economic welfare of the individual and of society depends on the degree of justice and equity in the distribution patterns of income and wealth. The poor also have a right to the wealth of the nation and the community (The Qur'an 51:19). Muslims are obligated to support and advocate for the needy, because failing to uphold that duty would be tantamount to the rejection of faith (The Qur'an 107:1-3). Christians are inspired by the biblical mandate to "lighten the burden of those who work for you. Let the oppressed go free." (Isaiah 58:6). Other biblical texts reinforce this call to justice for all, including a warning to rich oppressors who cheat labourers out of their wages (James 5:4).

Catholic social teaching has an important insight to offer here. Pope St. John Paul II begins his 1981 document on human work with the observation that "only human beings work". In a way, being a worker defines the human person. This truth is reflected in the Book of Genesis where humans are spoken of as being created "in the image of God" so that they can carry out a role for God, acting as managers of God's creation. Hence the words: "Let us make humankind in our image, according to our likeness [so that they can] have dominion over the fish of the sea . . . ." (Genesis 1:26). This is why humans should be seen as having a **right** to employment, and indeed employment in which they can feel they are **truly contributing to the common good**. It is in this sense that Catholic teaching views human work not simply as a job (a purely economic term) but as a vocation.

The Fair Workplaces, Better Jobs Act, 2017 currently before you, based on the public consultations that occurred during the Changing Workplace Review, offers a golden opportunity to review labour laws, identify needed changes, and develop new legislation based on fairness and dignity for all. We support in principle the remedial measures set out in Bill 148 while at the

same time urging you to go a few steps further in taking the rationales for certain provisions, already in the Bill, to their logical conclusion. We do wish to note at the outset our support for the Bill going beyond the Final Recommendations of the Special Advisors in its provisions to raise the minimum wage to $15 an hour.

Based upon our core beliefs and experiences, ISARC is proposing three overarching values that should guide the amendments to the Employment Standards Act and the Labour Relations Act: namely **equality between workers, equality between employers and workers' representatives, and enhancing the democratic process**. There is no justification for treating workers differently in terms of basic minimum rights merely because they hold different statuses or jobs in the workplace. There is no justification for providing weaker rights to workers and their selected representatives than are provided to employers under the legislation. Nor should workers lose their civil rights at the door of the workplace. Workers should not have a tougher hurdle to climb to access representation than citizens have in their municipal, provincial or federal spheres.

EQUALITY BETWEEN WORKERS

Employees should have equal rights under the law. Employees doing similar work should be paid the same compensation regardless of their employment status. Employers may have valid organizational reasons for structuring their workforce in different ways. Those decisions, however, should not be based on securing cheaper labour or weaker labour standards.

Exclusions from all or parts of the legislation

Both the Employment Standards Act and the Labour Relations Act contain numerous exclusions from all or parts of their provisions. Indeed only a small percentage of workers are covered by each and every minimum standard in the Employment Standards Act. Exclusions from the ESA may not be able to be revoked completely in one fell swoop but they should be reviewed and limited as quickly and as much as possible. Exclusions from the Labour Relations Act are no longer justified, especially in view of recent Supreme Court of Canada rulings that the freedom of association includes the right to bargain collectively. Schedule 2 of the Bill should be amended so that all employees are covered by the Labour Relations Act unless they are

already covered by a separate statute, consistent with the Charter of Rights and Freedoms, granting them collective bargaining rights

Dependent and Independent contractors

Many employers classify their staff as independent contractors so that they can avoid paying them benefits, paid vacations and sick days, pensions and overtime pay. Employers are provided a similar escape from employment standards and labour relations obligations by labeling some employees as managers. This practice demeans workers by treating them simply as an economic unit and ignoring the deeply-felt human need to be identified with the enterprise. Pope John Paul calls it a form of materialism. Catholic documents have long spoken of it as treating human labour "as a commodity".

In relation to independent contractors, we support in remedial principle Section 5 of Schedule 1 that Employers should have to prove that persons providing them labour are not "employees" but are concerned about the enforcement process. Rather than merely reversing the onus of proof, we recommend that the Bill state that everyone providing service to an employer be presumed to be an employee, unless proven otherwise by the Employer.

The Bill however does not address the situation of "dependant contractors" in the Employment Standards Act. They too are economically dependent on the Employer and should have all the rights of employees under the statute. The Labour Relations Act already does so. Currently however dependant contractors though recognized as employees at "common law", only get treated as employees under the Employment Standards Act if they go through lengthy court litigation to concretize their rights under common law. The Employment Standards Act is intended to provide basic minimum rights to all workers, whether they are unionized or not. It is unfathomable to continue a regime where dependant contractors are automatically treated as employees if they are unionized but not if they have not yet been organized.

The Employment Standards Act should be amended to include in the definition of "employee" all workers who meet the test of dependent contractor under the Labour Relations Act. The

Ministry of Labour should also step up its inspections of workplaces, especially in industries where misclassification of staff as “contractors” has increased, and impose severe penalties on those violating the law.

Age and Occupational Differentiations

The lower minimum wages for students under the age of 18 and for liquor servers can no longer be justified in the face of the principle of equal pay for equal work. Section 14 of Schedule 1 of the Bill should eliminate these clauses.

Schedule 1 should also be amended to eliminate the portion of Section 44 that allows for regulations to discriminate against workers over the age of 65 in relation to benefits.

Size of Workplace

We welcome the inclusion in Section 29 of Schedule 1 which extends Personal Emergency Leave to employees of all workplaces regardless of size. We also appreciate in principle the conversion of Personal Emergency Leave Days to being a paid leave. We recommend extending the paid portion of this leave beyond the first two days. Workers should not feel economic coercion to attend work while ill and run the risk of infecting their fellow workers and clients.

Equal Pay

We support in principle Section 22 of Schedule 1 that seeks to secure equal pay for equal work and especially the provision that reductions in rates of pay are not the route to take to achieve this equity. We are concerned, however, that there are too many loopholes for Employers to justify differentiations in pay, whether they be by making minor differences in duties between the different statuses of workers or through the exceptions written in to the current draft of the Bill. As well the current draft of these provisions in the Bill do not appear to contain adequate enforcement mechanisms.

There is also a significant flaw in the draft legislation in grand-parenting current collective agreements that are negotiated prior to April 1, 2018. The basic principle of the Employment Standards Act is that it should provide a floor below which no workers should fall. The history of minimum wage increases never grand-parented collective agreements and sheltered them from the higher rates. Neither should Bill 148.

We request that you delete from the Bill all grand-parenting provisions, in respect of equal pay and in relation to any other provisions.

Finally we are disappointed that the law does not address the compensation of workers who are not full time for the insurance benefits provided by Employers to full-time employees. The Pay Equity Act mandated the extension of equal pay to include pay in lieu of insurance benefits.

We urge the Legislature to put compensation in lieu of insured benefits enjoyed by full-time employees on the top of the agenda for the next step in creating a more complete Fair Workplaces Better Jobs Act.

Just Cause Protection

Sections 4 and 9 of Schedule 2 of the Bill recognize that workers need and deserve protection from unjust discipline and discharge. The Bill will provide that protection but only to unionized workers and only in the limited period of time between unionization and achievement of the first collective agreement and between the expiry of one agreement and the achievement of a renewal.

Workers at common law have the right to protection from unjust discipline and discharge but this right can only be enforced through lengthy and costly litigation in the courts. The Federal jurisdiction has given this right to non-union workers and enabled it to be enforced through the more efficient forum of arbitration. There is no reason for Bill 148 not to provide this right to all workers. It needs to be kept in mind that currently most rights under the Employment Standards Act are only enforced by workers once they leave their employment. The new rights provided for in Schedule 1 are no more likely to be enforced by active employees unless fears of possible retaliation can be reduced. The best way for this to happen is to extend just cause protection to all workers.

Employees of Temporary Help Agencies and Subcontractors

One of the ways Employers seek to lower their overall labour obligations is to contract for the supply of labour through a temporary help agency or to actually farm out the production of goods or delivery of services to a subcontractor. The use of such alternative supplies of labour makes it difficult to enforce the statutory labour standards.

We support in principle Section 23 of Schedule 1 subject to the concerns we raised in connection with Section 22. We also support Section 15.3 part of Section 5 of Schedule 2 making it easier for such employees to unionize. We believe it is possible through Bill 148 for additional measures to be taken.

There should be an entitlement for employees of temporary help agencies to become employees of the client employer after working for the client employer a minimum period of time and there should be limits on the proportion of the client's workforce that are employees of temporary help agencies.,

We urge you to include in the Bill a provision that makes the client employer jointly and severally liable for all the obligations of Temporary Help Agencies and Subcontractors.

EQUALITY BETWEEN EMPLOYERS AND THE REPRESENTATIVES OF WORKERS

With inequality and precarious work steadily increasing in our society, the ability to join a union is a key way for workers in Ontario to advance out of poverty. Unions can help reduce our society's growing inequality and turn poorly paid jobs into decent jobs.

While popular belief has it that the law is tilted in favour of unions, the opposite is in fact the case. One obvious example is found in Sections 79, 81, 82 and 83 of the Labour Relations Act prohibiting unlawful strikes and lockouts. On their face, these provisions appear neutral. However if one goes back to the definitions in Section 1, a lockout is restricted to action by the

Employer intended to restrict employees' rights under the Act in relation to dealings with the Employer, while a strike covers any collective action by workers, including ones not aimed at the Employer, such as political strikes. Thus the law over-reaches and impairs what would otherwise be included in workers' Charter Rights of Freedom of Expression and Freedom of Association.

We are disappointed that the Bill does not make any changes to remove this imbalance of rights between Employers and the agents who bargain on behalf of employees. Indeed the Bill creates a further inequality.

Schedule 2 of the Bill in Section 5, which will insert new Sections 15.1 and 15.2, fills a gap that is present in this province's Labour Relations Act, in comparison to similar Acts in other provinces and at the federal level. The new provision will empower the Labour Relations Board to modify bargaining unit descriptions in certain circumstances. Section 15.2 addresses situations where bargaining units which are found to be no longer appropriate for collective bargaining. The Bill did not go so far as to allow for sectoral bargaining where a union, representing employees of a number of different employers all involved in the same economic sector and in the same geographic area could apply for consolidation of its multiple bargaining units. The Bill does however allow an Employer to apply to the Labour Relations Board to consolidate a number of its bargaining units which are represented by different Unions.

There is no justification for this differential treatment, especially since the proposed wording of the Bill would infringe on the Charter right of freedom of association by removing from one group of workers, the union that they voluntarily chose. Section 15.2 Subsection 2 should be amended to only permit consolidation of bargaining units of the same employer and the same union.

ENHANCING DEMOCRATIC PROCESSES

The Special Advisors appointed to conduct the Changing Workplace Review, in their open letter to the public at the commencement of this exercise, quote the statement of former Chief Justice Brian Dickson of the Supreme Court of Canada on the central importance of work in our society.

That importance goes beyond financial to dignity and self-respect and a contributory role in society.

In public life we decry the low level of voter turnout and this problem is especially evident amongst younger voters. One reason for this alienation amongst the young is their questioning of how the political system affects them. The crucial area of their lives is their desire to find rewarding work. In the workplace, if their experience is that they are shut out from decision-making, it is no wonder that they choose not to participate in more distant political jurisdictions. In light of the recognition that local government is the one closest to the governed, for workers that closest level of government is the government in their workplaces.

Opening up access to participation in workplace governance will help dissolve that alienation and serve as a means to facilitate their participation in the broader society. As well, this population's members, when they are successful in securing employment, are generally employed in low-wage, insecure positions. Referring back to Maimonides, the best way to help this population is to give them access to the collective bargaining tools to enable them to improve their economic position and security of employment.

Collective bargaining provides workers an opportunity to participate in democratic processes in the workplace. It also allows workers a voice in contributing to the well-being of the Employer's enterprise.

Means of showing majority support and access to the voters' list

Bill 148 in Section 5 of Schedule 2 dealing with the new Section 15.3 of the Act will extend card based certification to a limited number of sectors which historically have been difficult for workers to organize in. However in principle there is no justification for any limits to the sectors of the economy where card based certification should be available.

Section 2 of Schedule 2 recognizes the deficiencies in the timing of access to the voters list and will create such access once workers have shown a significant interest in unionizing to the extent of 20% of the proposed bargaining unit. To make that access meaningful however, the contents of the voters' list needs to be expanded beyond names, phone numbers, and personal email addresses to

also include employees' mailing addresses, job classification, employment status (i.e., full-time or part-time and permanent or temporary), and an organizational chart that outlines the relationship of the employees in the proposed unit to other employees and the lines of authority between management, supervisors, and subordinate employees. It is important to note that this information is provided by employers in the federal jurisdiction at the time they respond to a union's application for certification.

While concern has been raised that providing mailing addresses could open the employee to undue influence from union organizers, this has not been the case under federal jurisdiction nor has this been a problem in public elections where voters lists containing street addresses are automatically available not only to registered candidates but to anyone from the public. In the same way canvassing is made easier in public elections by listing voters by poll number, so too democratic decision-making for workplace elections needs to allow the canvassers to know where to reach voters based upon their workplace neighbourhoods.

Successor Rights in Contract Flipping

As discussed earlier in this submission, some employers choose to contract out parts of their operations to subcontractors. They then transfer the contract from time to time to other subcontractors. We recognize that the employer may want to make its operations more efficient and that using and changing subcontractors can bring new administrative or managerial expertise to achieve this objective. This objective, however, should not be achieved through downward pressure on employee compensation. Workers should not lose their democratic rights of participation in workplace governance, namely their Union and their achievements from collective bargaining just because the Employer wishes to change subcontractors.

Ontario employers in the private and public sector are bound by successor rights legislation when a business or portion thereof is sold. This, however, is not the case for employers who sub-contract services. This is the case even if the new contract provider hires the *same* employees to perform the *same* work in the *same* location. In response, Bill 148 in Section 7 of Schedule 2 proposes to extend successor rights in the case of contract flipping, but only to the building services industry and allows for regulations to potentially extend successor rights to publicly funded services – although exemptions can be made through regulations. It should not matter whether workers are employed in a publicly or privately funded contracted service – all workers deserve protections against contract flipping. The proposed extension of successor rights for building services applies whether the

subcontractor is publicly or privately funded. That approach should be the model for all extensions of successor rights to contracted services. Bill 148 should extend successor rights to all contracted services in the same way it applies to all transfers of a portion of a business under the current successor rights provision.

CONCLUSION

The plight of Ontario's contract, temporary and part-time workers cries out for action. We are encouraged with the tabling of Bill 148 as well as the decision of the members of the Legislature to authorize hearings after First Reading. We strongly urge this Committee to complete its deliberations in time to enable the full House to finalize the contents of the Bill and to pass it before the end of the calendar year, so as to make meaningful progress toward the eventual achievement of a true Fair Workplace containing Better Jobs Act.

Appendix A – Portions of Bill 148 endorsed in the Brief

1. Page 4 – The increase in the minimum wage to $15 by January 1, 2019
2. Page 5 – Prohibit Employers treating employees as non employees
3. Page 6 – Increased penalties for violating the law
4. Page 6 – Extension of Personal Emergency Leave to employees of all workplaces
5. Page 6 – Making some portion of Personal Emergency Leave paid
6. Page 6 – Obliging the Employer to pay the same compensation levels of full-time workers to all other classes of workers doing the same work
7. Page 7 – Provide right to just cause for discipline to workers following certification and in between the operation of successive collective agreements
8. Page 8 – Provide employees of temporary help agencies the same compensation as is given to employees of the client employer
9. Page 8 – Allow employees of temporary help agencies access to the card check procedure for unionization
10. Page 9 – Empower the Ontario Labour Relations Board to consolidate newly certified bargaining units with existing units of the same employer and same union
11. Page 10 – Employer the OLRB to consolidate bargaining units of the same union and same employer where the current bargaining unit is no longer appropriate for collective bargaining.
12. Page 11 – Extension of card check unionization process to employees in the building services sector and in home care
13. Page 11 – Advancing access to voters lists when union has support from approximately 20% of the bargaining unit
14. Page 11 – Reinstatement of successor rights in contract flipping situations in the building services sector

Appendix B – Recommendations to amend Bill 148

1. Page 4 - Remove from the Labour Relations Act all exclusions from the right to engage in collective bargaining other than managers
2. Page 5 – Insert a presumption that everyone providing service to an employer is presumed to be an employee with the right of the Employer to prove otherwise
3. Page 5 – Include in the Employment Standards Act a provision defining as an employee, everyone who meets the Labour Relations Act definition of “dependent contractor”
4. Page 6 – Remove lower minimum wage provisions for liquor servers and students under the age of 18
5. Page 6 – Eliminate the regulatory power under Section 44 of the Employment Standards Act legitimizing differential treatment for workers over age 65
6. Page 6 – Extending paid Personal Emergency Leave beyond the first two days

7. Page 6 – Clarify that the right to equal pay is not lost if there are minor differences in duties, responsibilities or work assignments
8. Page 6 – Remove the criteria allowing for differences in rates of pay other than seniority systems or merit plans that do not violate the Human Rights Code
9. Page 6 – insert a means to allow workers to independently access rate of pay in the workplace to ensure their rights to equal pay are being observed.
10. Page 7 – Remove all grand-parenting protections of conditions below the Employment Standards minimums
11. Page 7 – Provide just cause protection for all workers
12. Page 8 – Entitle employees of a temporary help agency to become employees of the client employer once they have worked a designated minimum period with the client
13. Page 8 – Make the client employer jointly and severally liable for the obligations of temporary help agencies and sub-contractors
14. Page 9 - Remove the power of the OLRB to merge bargaining units of different unions
15. Page 11 – Include in the voters list provided when a Union manifests 20% support, the mailing address, job classification, employment status of employees along with an organizational chart showing lines of authority
16. Page 12 – Establish successor rights in all contract flipping situations

Appendix C – Recommendations for Future Action

1. Page 4 – Review and end as many as possible exclusions from the Employment Standards Act as quickly as possible
2. Page 5 – The Ministry of Labour should step up enforcement
3. Page 7 – Pursue further legislative amendment to ensure right to equal pay includes pay in lieu of insured and other benefits only provided to full-time workers
4. Page 12 – Follow up on the recommendation in the Changing Workplace Review with a further overhaul of the legislation every 5 years to further remove barriers to unionization and effective collective bargaining as well as to continue to raise minimum standards.